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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE
COMPANY, d/b/a Northern Stevedoring &
Handling, and NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a Northern
Stevedoring & Handling, on its own behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a Marathon
Fuel Services, and SHORESIDE PETROLEUM,
INC., d/b/a Marathon Fuel Services, on its own
behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

Case No. 3:98-cv-009-TMB

**CORRECTION TO
OPPOSITION TO MOTION IN
LIMINE RE: FUNDS
WITHHELD FROM SPENCER**

**BURR, PEASE
& KURTZ**
A PROFESSIONAL CORPORATION
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On July 2, 2007, plaintiff North Star Terminal & Stevedoring Company ("North Star")
filed an opposition to defendant Nugget Construction, Inc.'s ("Nugget") Motion in Limine Re:

Funds Withheld from Spencer. North Star inadvertently submitted a pleading with three incomplete footnotes, Nos. 5, 6 & 7. Footnote 5 should have referenced Exhibit 1, containing the letters dated August 21, 1997 and August 26, 1997, from the Army Corps of Engineers to Nugget. Footnote 6 should have referenced Exhibit 2, which was a letter dated August 6, 1997, from Nugget to the Army Corps of Engineers. These exhibits are attached to this correction.

Finally, footnote 7 should have read, in full:

Northern Stevedoring recognizes that the Ninth Circuit has previously concluded that Spencer Rock Products was a materialman. *See North Star Terminal & Stevedoring Co. v. Nugget Constr., Inc.*, 10 Fed. Appx. 705, 2001 U.S. App. LEXIS 21547 (9th Cir. Sept. 27, 2001). However, that analysis was based on a different standard and did not contemplate the contract's incorporation of the Prompt Pay Act and the legal standards associated with that Act. *See id.* at 4-5. The Corps had an obligation under the Prompt Pay Act and the Miller Act to ensure that the primary contractor, Nugget, was fulfilling its obligations in order for it to receive progress payments. In meeting that obligation, the Corps examined the Support Agreement and must have ultimately concluded that Spencer was a subcontractor. That is the only way that the Corps could continue to make progress payments because it knew that the Miller Act bond would protect those vendors who were not being paid by virtue of their relationship with the subcontractor, Spencer.

North Star provides this correction and apologizes for the inconvenience to the court and the parties.

DATED: July 2, 2007

s/ David W. Pease
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Correction to Opp. to Mtn in Limine re Funds Withheld from Spencer
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CERTIFICATE OF SERVICE

I certify that on the 6th day of July, 2007,
a copy of the foregoing CORRECTION TO OPPOSITION
TO MOTION IN LIMINE RE: FUNDS WITHHELD
FROM SPENCER was served electronically to:

Steven S. Shamburek, Esq.
Traeger Machetanz, Esq.
Paul D. Stockler
Herbert A. Viergutz
C. Patrick Stoll, Esq.

s/ David W. Pease

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